IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO. 52 OF 2007

IN

NOTICE OF MOTION NO. 833 OF 2006

IN

SUIT NO. 774 OF 2006

Sureshkumar Mishrimal Jain ... Appellant
(Orig. Defendant)

Vs.

Padmini Hiralal Jain ... Respondent
(Orig. Plaintiff)

Mr. B.B. Saraf i/b. Kiran Jain &co. for the appellant.
Mr. Shashi Jain for the respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 26th July, 2007.

P.C.

1. Admit. By consent of the parties, heard forthwith.

2. The appellant is the defendant. The respondent had filed the suit claiming a decree of declaration that the agreement between the plaintiff and the defendant dated 1.10.2005 to get the rent bill of the suit premises transferred to the name of the plaintiff and subsequent confirmation thereof by an affidavit dated 24.10.2005 relinquishing his right, title and interest including tenancy right therein are valid, subsisting and binding on the defendant. By prayer clause (c) of the suit, a money decree for refund of the amount of Rs.10 lakhs with interest was sought.

3. In this suit, a Notice of Motion was taken out by the plaintiff claiming an order for appointment of Court Receiver as also for an order of temporary injunction against the defendant. That Motion was registered as Notice of Motion No.833 of 2006. On the date on which the Motion came up for hearing, none appeared for the defendant. It appears from the order that the Court perused the reply as also the written statement filed by the defendant wherein the defendant had accepted that he had received an amount of Rs.10 lakhs. According to the defendant, the amount was received as a loan advanced by the plaintiff to the defendant. By the order passed in the Notice of Motion dated 18th December,2006, the learned Single Judge,

taking into consideration the alleged admission made by the defendant, passed a money decree for Rs.10,00,000/- in favour of the plaintiff and against the defendant. The Court has observed that the decree has been passed in exercise of the powers of the Court under Order XII Rule 6 of the Code of Civil Procedure. It is an admitted position that neither the plaintiff had taken out any Motion for a decree admission under Order XII Rule 6 of C.P.C. nor had the Court given any notice to the defendant putting him on notice that in view of the admission contained in the written statement, the Court proposes to pass a decree against him. The Decree has been passed under the provisions of Order XII Rule 6. Sub-rule (1) of Rule 6 of Order XII is relevant which reads as under :-

> "6. Judgment on admissions - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions."

Perusal of the above rule shows that when the Court finds that facts have been admitted either in the pleading or otherwise, the Court has power either on an application made by a party or on its own motion at any stage of the suit, to pass a decree against the defendant relying on the admission. This power is vested by law in the Court. Obviously, therefore, this power has to be exercised by the Court in consonance with the principles of natural justice. It is one of the elementary principles of natural justice that before any order adverse to the interest of a party is made by the Court, it is the duty of the Court to inform that party the order that the Court proposes to make against him and also to intimate to him the material on the basis of which the Court proposes to make the order. Where by a statute power is conferred on the court, there is a presumption that it will be exercised in a manner which is fair in all the circumstances. The principle of fairness requires that a person who may be adversely affected by the decision should have an opportunity to make representation, before the decision is taken with a view to produce a favourable result. Since, the person affected usually cannot make worthwhile representations, without knowing what factors may weigh against him, the principle of fairness will require that he is informed of the gist of the case which he has to answer. Therefore,when at the hearing

of the Notice of Motion, the Court found that there is an admission of liability made by the defendant and the defendant was absent and if the Court wanted to pass decree on admissoin on suo motu without any party making application, it was the duty of the Court, in order to comply with the principles of natural justice, to give the defendant notice that it proposes to exercise its power under Order XII Rule 6 of making a decree against the defendant on admission and also to tell him which statement made by him, according to the Court, amounts to admission of liability. Had such a notice been given then only the defendant would have got an opportunity to explain to the Court, as to why his statement which according to the Court, amounts to an admission of liability is, in fact, not an admission of liability. It is settled law that an admission is capable of being explained. Therefore, the defendant was entitled to an opportunity to explain the alleged admission. The Court in the present case by exercising its power under Order XII Rule 6 without issuing any notice to the defendant has committed breach of the principles of natural justcie. The Courts are bound by the principles of natural justice. The Courts have to administer justice in accordance with the principles of natural justice. It is a part of our legal system and therefore, in our opinion, the learned Single Judge had a duty to conform to the principles of natural justice in making the

order.

4. As the order impugned in the Appeal has been made in breach of the principles of natural justice, it is liable to be set aside. The order is accordingly set aside. The suit is restored and the Notice of Motion No.833 of 2006 is remitted back for decision in accordance with law.

5. It appears from the order that in view of the intention declared by the Court of making a decree on admission, the plaintiff has made some concessions before the learned Single Judge. Now that we have set aside the order, those concessions will no longer be binding on the plaintiff. It is also made clear that the plaintiff shall be entitled, if he is so advised, to take out Notice of Motion under Order XII Rule 6 of C.P.C. It is further made clear that the Court also would be free to invoke its power under Order XII Rule 6 of C.P.C.

The Appeal is disposed of.

(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)